



Transportation & Economic Development Appropriations Committee

**Friday, January 27, 2006
9:30 a.m. - 12:00 p.m.
Reed Hall (102)**

**Allan G. Bense
Speaker**

**Don Davis
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Transportation & Economic Development Appropriations Committee

Start Date and Time: Friday, January 27, 2006 09:30 am

End Date and Time: Friday, January 27, 2006 12:00 pm

Location: Reed Hall (102 HOB)

Duration: 2.50 hrs

Consideration of the following bill(s):

HB 281 CS Specialty License Plates by Baxley

HB 35 CS Abatement of Drug Paraphernalia by Peterman

Governor Bush and Lt. Governor Jennings' Recommendations for Hurricane Preparedness, Response and Recovery

Presentation by VISIT FLORIDA

NOTICE FINALIZED on 01/13/2006 16:01 by SLB



Florida House of Representatives

Fiscal Council

Committee on Transportation & Economic Development Appropriations

Allan G. Bense
Speaker

Don Davis
Chair

AGENDA

Transportation & Economic Development Appropriations

January 27, 2006

9:30 a.m. – 12:00 p.m.

Reed Hall (102 EL)

- I. Meeting Call to Order
- II. Opening remarks by Chairman Davis
- III. HB 281 CS Specialty License Plates by Baxley
- IV. HB 35 CS Abatement of Drug Paraphernalia by Peterman
- V. Governor Bush and Lt. Governor Jennings' Recommendations for Hurricane Preparedness, Response and Recovery
- VI. Presentation by VISIT FLORIDA
- VII. Closing remarks
- VIII. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 281 CS Specialty License Plates
SPONSOR(S): Baxley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 548

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	12 Y, 1 N, w/CS	Thompson	Miller
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) State Infrastructure Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 281 w/CS creates two new specialty license plates:

- The "A State of Vision" license plate, and establishes an annual use fee of \$25 to be paid by purchasers in addition to license taxes and fees. The annual use fee will be distributed to The Florida Association of Agencies Serving the Blind, Inc., to fund its activities, programs, and projects within the state through its local nonprofit organizations' direct-support services to blind and visually impaired people.
- The "Future Farmers of America" specialty license plate, and establishes an annual use fee of \$25 to be paid by purchasers in addition to license taxes and fees. The annual use fee will be distributed to The Florida Future Farmers of America Foundation, Inc., to fund activities and services of the Future Farmers of America.

Both organizations seeking authority for these plates have submitted the information and application fee required by current law.

In addition, the bill increases the annual use fee of the "Florida Sheriffs Youth Ranches" license plate from \$20 to \$25.

The fiscal impact of the bill of approximately \$120,000 on the Department of Highway Safety and Motor Vehicles (DHSMV) for implementation of the new specialty license plates will be offset by the application fees paid to DHSMV by the sponsoring organizations.

The bill will take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill requires DHSMV to develop and provide for the manufacture of new license plates, and therefore requires county tax collectors offices to maintain an appropriate inventory and administer the new plates.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to an organization or organizations in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization. Under s. 320.08053, F.S., an organization may seek Legislative authorization for a new specialty license plate by meeting a number of requirements.

An organization is first required to submit to the Department of Highway Safety and Motor Vehicles (DHSMV):

- A request for the plate describing it in general terms;
- The results of a professional, independent, and scientific sample survey of Florida residents indicating that 15,000 vehicle owners intend to purchase the plate at the increased cost;
- An application fee of up to \$60,000 defraying DHSMV's cost for reviewing the application, developing the new plate, and providing for the manufacture and distribution of the first run of plates; and
- A marketing strategy for the plate and a financial analysis of anticipated revenues and planned expenditures.

These requirements must be satisfied at least 90 days prior to the convening of the regular session of the Legislature. Once the requirements are met, DHSMV notifies the committees of the House of Representatives and Senate with jurisdiction over the issue, and the organization is free to find sponsors and pursue Legislative action.

If a proposed specialty plate fails to be enacted by the Legislature, DHSMV returns the application fee and other required documents to the organization. If it passes and becomes law, DHSMV notifies the organization, modifies its computer programming to accommodate the new plate, and requests the laminate manufacturer, 3M Company, to produce a prototype roll-coat. PRIDE, the contracted manufacturer of license plates, embosses and roll-coats sample plates that must be submitted to FHP, the Governor, and the Cabinet for approval. Once approval is given, PRIDE begins full production of the plates and distributes them to the Tax Collectors' Offices for sale to the public.

Discontinuance of an approved specialty license plate occurs only when the number of valid registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter is to be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 1,000 plates. According to DHSMV there are currently twenty-two plates that are not meeting the minimum sales requirement and could be discontinued in 2006 if their sales do not increase. If none of these plates meet the minimum sales requirement by next summer, the number of plates offered for sale could be reduced to seventy-eight.

Specialty license plates are distinguished from other types of specialized license plates by the fact that anyone may obtain one by simply paying an additional annual use fee, and by the fact that annual use fees are dedicated to supporting a particular cause or organization. The Legislature has also created a number of specialized license plates that are not specialty plates. These plates differ because the purchaser must be eligible by his or her status to obtain the plate, and because ownership of these plates does not require payment of an annual use fee that is distributed for charitable purposes. These types of "status plates" are referred to in the statutes as special plates, and include: the Governor and Legislator plates; the amateur radio operators plate; the disabled veterans plate; the street rods plate; the National Guard, Pearl Harbor Survivor, Combat-wounded veteran and U.S. Reserve plates; and the Medal of Honor plate.

The statutes provide for all specialty plates within ss. 320.08056 and 320.08058, F.S., and provide for a uniform procedure for approval and authorization in s. 320.08053, F.S. By comparison, other specialized plates (the status or special plates) are created on an ad hoc basis by the Legislature, and the statutes provide for them independently of one another in separate sections. It is unnecessary for a proponent of a special plate to obtain prior approval before seeking Legislative action.

The Legislature has enacted 106 specialty license plates to date, though only 100 are currently available for purchase. Annual use fees for sales of specialty license plates for 2003-2004 totaled \$26,168,581 and for fiscal year 2004-2005 the total was \$29,049,472.90. Since the program's inception in 1986, the DHSMV has collected annual use fees totaling more than \$280 million.

Effect of Proposed Changes

HB 281 directs DHSMV to develop the "A State of Vision" license plate. A qualified motor vehicle owner may obtain the "A State of Vision" license plate upon payment of a \$25 annual use fee in addition to the appropriate license taxes and service fees.

The Florida Association of Agencies Serving the Blind, Inc., will retain all revenue from the annual use fee to offset costs of developing and establishing the plates. Thereafter, up to 5 percent of the annual use fee proceeds must be distributed to The Florida Association of Agencies Serving the Blind, Inc., for administrative costs and up to 20 percent is to be used for promotion and marketing of the specialty license plate. All remaining annual use fee revenue shall be used by Florida Association of Agencies Serving the Blind, Inc., to fund its activities, programs, and projects within the state through its local nonprofit organizations' direct-support services to blind and visually impaired people.

According to DHSMV, the Florida Association of Agencies Serving the Blind, Inc., has met all the requirements set fourth in s. 320.08058, F.S. with regard to the "A State of Vision" specialty license plate.

The bill also directs DHSMV to develop the "Future Farmers of America" license plate. A qualified motor vehicle owner may obtain the "Future Farmers of America" license plate upon payment of a \$25 annual use fee in addition to the appropriate license taxes and service fees.

The Florida Future Farmers of America Foundation, Inc., will retain all revenue from the annual use fee to offset costs of developing and establishing the plates. Thereafter, up to 10 percent of the annual use fee may be used for administrative, handling and disbursement expenses, and up to 5 percent may be used for advertisement and marketing costs. All remaining annual use fee revenue shall be used by the Florida Future Farmers of America Foundation, to fund its activities, programs, and projects including, but not limited to, student and teacher leadership programs, the Foundation for Leadership Training Center, teacher recruitment and retention, and other special projects.

According to DHSMV, the Florida Future Farmers of America Foundation, Inc., has met all the requirements set fourth in s. 320.08058, F.S. with regard to the "Future Farmers of America" specialty license plate.

Also HB 281 w/CS increases the "Florida Sheriffs Youth Ranches" license plate annual use fee from \$20 to \$25. The annual use fees will be distributed to the Florida Sheriffs Youth Ranches, Inc., for its operations.

C. SECTION DIRECTORY:

Section 1. Amends s. 320.08056, F.S., increasing the annual use fee for the "Florida Sheriffs Youth Ranch" license plate from \$20 to \$25; and providing for a \$25 annual use fee for the "A State of Vision" and the "Future Farmers of America" license plates;

Section 2. Amends s. 320.08058, F.S., creating "A State of Vision" and "Future Farmers of America" license plates; providing for plate design; providing for annual use fees and other fees; and providing for distribution of annual use fees;

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section below.

2. Expenditures:

See FISCAL COMMENTS section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who elect to purchase these specialty license plates, will be required to pay an annual use fee of \$25 in addition to applicable license taxes and administrative charges. The fee from the "A State of Vision" license plate will be distributed to the Florida Association of Agencies Serving the Blind, Inc. The bill provides for the startup costs for The Florida Association of Agencies Serving the Blind, Inc., to be recovered from the initial plate sale proceeds. Proceeds from the sale of this license plate will fund the association's administrative costs, license plate marketing costs, and direct-support services to blind and visually impaired people in the private sector.

The fee from the "Future Farmers of America" specialty license plate will be distributed to offset costs of developing and establishing the plates. Thereafter, up to 10 percent of the annual use fee may be used for administrative, handling and disbursement expenses, and up to 5 percent may be used for advertisement and marketing costs. All remaining annual use fee revenue shall be used by the Florida

Future Farmers of America Foundation, Inc., to fund its activities, programs, and projects including, but not limited to, student and teacher leadership programs, the Foundation for Leadership Training Center, teacher recruitment and retention, and other special projects.

Fees from the "Florida Sheriffs Youth Ranches" license plate will be distributed to the Florida Sheriffs Youth Ranches, Inc., for its operations.

Since it is impossible to determine how many persons will purchase the plates, it is impossible to determine the aggregate impact on the private sector.

D. FISCAL COMMENTS:

Implementation of HB 281 will cost DHSMV approximately \$120,000 in contract programming, development labor, and product purchasing costs for creation of the "A State of Vision" and the "Future Farmers of America" license plates. This impact is offset by the statutory application fee of \$60,000, which has been submitted to DHSMV by each of the two organizations seeking creation of the specialty license plates.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On December 6, 2005 the Committee on Transportation adopted three amendments to HB 281.

- Amendment 1. Removed language "notwithstanding the provisions of s. 320.08058, F.S." related to statutory prerequisites for seeking a specialty license plate from that part of the bill related to creation of the "A State of Vision" license plate. The organization sponsoring this license plate has met the statutory specialty license plate requirements.
- Amendment 2. Created the "Future Farmers of America" specialty license plate. Revenues from the license plate will go to the Florida Future Farmers of America Foundation, Inc., to support FFA programs.
- Amendment 3. Increased the annual use fee for the "Florida Sheriffs Youth Ranches" license plate from \$20 to \$25.

The committee then voted 12-1 to report the bill favorably with committee substitute.

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CHAMBER ACTION

1 The Transportation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to specialty license plates; amending s.
7 320.08056, F.S.; revising the annual use fee for the
8 Florida Sheriffs Youth Ranches license plate; providing
9 annual use fees for certain plates; amending s. 320.08058,
10 F.S.; creating the A State of Vision license plate and the
11 Future Farmers of America license plate; providing for the
12 distribution of annual use fees received from the sale of
13 such plates; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Paragraph (x) of subsection (4) of section
18 320.08056, Florida Statutes, is amended, and paragraphs (eee)
19 and (fff) are added to that subsection, to read:

20 320.08056 Specialty license plates.--

21 (4) The following license plate annual use fees shall be
22 collected for the appropriate specialty license plates:

23 (x) Florida Sheriffs Youth Ranches license plate, \$25 ~~\$20~~.

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(eee) A State of Vision license plate, \$25.

(fff) Future Farmers of America license plate, \$25.

Section 2. Subsections (57) and (58) are added to section 320.08058, Florida Statutes, to read:

320.08058 Specialty license plates.--

(57) A STATE OF VISION LICENSE PLATES.--

(a) The department shall develop an A State of Vision license plate as provided in this section. A State of Vision license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "A State of Vision" must appear at the bottom of the plate.

(b) The license plate annual use fees shall be distributed quarterly to the Florida Association of Agencies Serving the Blind, Inc., to fund direct-support services to blind and visually impaired people.

(c) The Florida Association of Agencies Serving the Blind, Inc., shall retain all revenue from the annual use fees until all startup costs for developing and establishing the plates have been recovered. Thereafter, up to 5 percent of the annual use fee revenue shall be used for administrative costs and up to 20 percent shall be used for promotion and marketing of the specialty license plate. All remaining annual use fee revenue shall be used by the Florida Association of Agencies Serving the Blind, Inc., to fund its activities, programs, and projects within the state through its local nonprofit organizations' direct-support services to blind and visually impaired people.

(58) FUTURE FARMERS OF AMERICA LICENSE PLATES.--

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52 (a) Notwithstanding the provisions of s. 320.08053, the
53 department shall develop a Future Farmers of America license
54 plate as provided in this section. Future Farmers of America
55 license plates must bear the colors and design approved by the
56 department. The word "Florida" must appear at the top of the
57 plate, and the words "Agricultural Education" must appear at the
58 bottom of the plate.

59 (b) The license plate annual use fee shall be distributed
60 quarterly to the Florida Future Farmers of America Foundation,
61 Inc., to fund activities and services of the Future Farmers of
62 America.

63 (c) The Florida Future Farmers of America Foundation,
64 Inc., shall retain all revenue from the annual use fees until
65 all startup costs for developing and establishing the plates
66 have been recovered. Thereafter, up to 10 percent of the annual
67 use fee revenue may be used for administrative, handling, and
68 disbursement expenses and up to 5 percent may be used for
69 advertising and marketing costs. All remaining annual use fee
70 revenue shall be used by the Florida Future Farmers of America
71 Foundation, Inc., to fund its activities, programs, and
72 projects, including, but not limited to, student and teacher
73 leadership programs, the Foundation for Leadership Training
74 Center, teacher recruitment and retention, and other special
75 projects.

76 Section 3. This act shall take effect July 1, 2006.

HB 35 CS
By Peterman

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

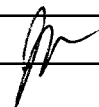

BILL #: HB 35 CS

Abatement of Drug Paraphernalia

SPONSOR(S): Peterman

TIED BILLS:

IDEN./SIM. BILLS: SB 100

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Health Care General Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Ciccone</u>	<u>Brown-Barrios</u>
3) <u>Transportation & Economic Development Appropriations Committee</u>		<u>McAuliffe</u> 	<u>Gordon</u> 
4) <u>Justice Council</u>			
5) _____			

SUMMARY ANALYSIS

HB 35 w/CS creates a nine member task force within the Executive Office of the Governor to recommend strategies for reducing the availability and use of drug paraphernalia. The bill specifies the members and their appointment, the chair's selection, the minimum number and location of meetings, public access to meetings and records, reimbursement for per diem and travel expenses, topics for task force review, and deadlines for submitting reports of findings and recommendations. The task force must hold its first meeting by July 15, 2006. The Office of Drug Control is to provide staff support within existing resources. The bill abolishes the task force on July 1, 2007.

This bill appears to have a minimal fiscal impact on the state. This bill does not appear to have a fiscal impact on local governments.

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--this bill creates a nine member task force that sunsets on July 1, 2007.

B. EFFECT OF PROPOSED CHANGES:

Current situation

Florida law provides a three-part definition of the term "drug paraphernalia." First, s. 893.145, F.S., defines the term's general meaning. Second, this section provides a non-exclusive list of items that meet the term's definition. Third, s. 893.146, F.S., provides a non-exclusive list of factors for determining whether an item or object is drug paraphernalia.

Section 893.145, F.S., defines "drug paraphernalia" as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., (the "Florida Comprehensive Drug Abuse Prevention and Control Act") or s. 877.111, F.S., (proscribing the inhalation, ingestion, possession, sale, purchase, or transfer of harmful chemical substances).

Further, s. 893.145, F.S., provides the following non-exclusive list of items that fall within the statutory definition of "drug paraphernalia":

- Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
- Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.
- Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
- Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
- Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.
- Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.

- Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
- Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.
- Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
- Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:
 - Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.
 - Water pipes.
 - Carburetion tubes and devices.
 - Smoking and carburetion masks.
 - Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.
 - Miniature cocaine spoons, and cocaine vials.
 - Chamber pipes.
 - Carburetor pipes.
 - Electric pipes.
 - Air-driven pipes.
 - Chillums.
 - Bongs.
 - Ice pipes or chillers.
 - A cartridge or canister, which means a small metal device used to contain nitrous oxide.
 - A charger, sometimes referred to as a “cracker,” which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container.
 - A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister.
 - A whip-it, which means a device that may be used to expel nitrous oxide.
 - A tank.
 - A balloon.
 - A hose or tube.
 - A 2-liter-type soda bottle.
 - Duct tape.¹

Section 893.146, F.S., provides that, in determining whether an object is drug paraphernalia, a court or other authority or jury must consider, in addition to all other logically relevant factors, the following factors:

- Statements by an owner or by anyone in control of the object concerning its use.
- The proximity of the object, in time and space, to a direct violation of this act.
- The proximity of the object to controlled substances.
- The existence of any residue of controlled substances on the object.

¹ This section further provides that drug paraphernalia is contraband and is subject to civil forfeiture.

- Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
- Instructions, oral or written, provided with the object concerning its use.
- Descriptive materials accompanying the object which explain or depict its use.
- Any advertising concerning its use.
- The manner in which the object is displayed for sale.
- Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.
- Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- The existence and scope of legitimate uses for the object in the community.
- Expert testimony concerning its use.

Section 893.147, F.S., proscribes the possession, use, manufacture, delivery, transportation, and advertisement of drug paraphernalia. It is a first degree misdemeanor to use or possess with intent to use drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of ch. 893, F.S.; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S.²

It is a third degree felony to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of ch. 893, F.S.; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S.³

If the person committing the delivery and manufacturing offense delivered the drug paraphernalia to a minor, the person commits a second degree felony. It is a first degree misdemeanor to sell or otherwise

² "To prove possession of drug paraphernalia, the state must show that the appellant had in his possession drug paraphernalia and that he had knowledge of its presence." *Lawson v. State*, 666 So.2d 193, 194 (Fla. 2d DCA 1995).

³ "The statute does not require that a person unequivocally know that the paraphernalia will be used for an illicit purpose; rather the state must only show that the defendant knew or reasonably should have known that the drug paraphernalia would be used for such purposes. It is important to note that the intent at issue in the statute is that of the seller/defendant, not that of the buyer." *Baldwin v. State*, 498 So.2d 1385, 1386 (Fla. 5th DCA 1986).

deliver hypodermic syringes, needles, or other such objects to a minor, with some lawful dispensing exceptions.

It is a third degree felony to use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know that it will be used to transport a controlled substance in violation of ch. 893, F.S., or contraband, as defined in s. 932.701(2)(a)1., F.S.

It is a first degree misdemeanor to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

Proving requisite intent is often difficult because some items sold have multiple and legal uses⁴ or contain features that may suggest a use other than an illegal use or support a claim that the item is not being sold for an illegal use.⁵

A “head shop” is a term defining a type of establishment allegedly specializing in selling drug paraphernalia. There has been a longstanding tension between “head shop” owners and law enforcement, prosecutors, and some communities over the sale of such items. Head shop owners argue that they only engage in legitimate business activities and that they only sell such items for legitimate uses, such as for use in smoking tobacco. They contend that possession, sale, and purchase of such items are not per se illegal. They further contend that many of the same items they sell in their shops are also sold in convenience stores and general retail stores and over the Internet.

Law enforcement, prosecutors, and opponents of head shops argue that, despite the claims of head shop owners that they sell such items only for legitimate uses, the owners are really engaged in selling drug paraphernalia to illicit substance users and producers. They contend that some of the items sold by head shop owners have little or no real use to the general public outside of the illicit drug trade. Further, they contend that the prevalence or number of such items within one establishment and as part of the establishment’s total inventory indicate that the true motive of head shop owners is to profit from the illicit drug trade under the pretext of engaging in a legitimate business.

Some communities have raised concerns that head shops adversely affect quality of life, increase accessibility to drug paraphernalia, and attract or engage in criminal activity. Communities throughout the nation have taken different approaches to address concerns about head shops, including outright prohibition; moratoriums on new licenses; special business classifications; nuisance abatement; fees and compliance checks on head shops that sell tobacco paraphernalia; limitations on hours of operation, window displays, and signage; lighting or security requirements; zoning; annexation of commercial properties; development standards; separation buffers; public education campaigns; media

⁴ In *Subuh v. State*, 732 So.2d 40, 44 (Fla. 2d DCA 1999), the court noted that a glass pipe sold by the defendant and which police claimed was a crack pipe was “very similar to the ‘glass tube’ or ‘pipette’ commonly found in any chemistry laboratory or glass ‘straw’ formerly used in hospitals for patients to drink liquids, except this one was shorter.” In reversing the conviction, the court stated that “[a]lthough we are hard pressed to think of a probable lawful use for this tube when purchased from this location, there are many lawful uses for glass tubing.”

⁵ For example, store owners arrested in a drug paraphernalia sting claim that they are selling glass tubes with miniature roses as “ornamental novelty items”; the police claim the tubes are “nothing but ready-made crack pipes.” Stores accused of selling glass tubes for crack pipes. *St. Petersburg Times* (December 31, 1998). Reporting on a 2004 U.S. Customs seizure of items in a Miami-Dade County warehouse, the South Florida Sun-Sentinel noted that the items included bongos “shaped as guns,” “disguised as lipstick tubes,” and “decorated with cartoon characters such as Cat in the Hat.” One bong, which was “disguised as a thermos, was placed inside a Simpsons lunchbox.” Customs agents raid drug warehouse. *South Florida Sun-Sentinel* (May 4, 2004). Similarly, reporting on a 2005 drug paraphernalia sting of head shops in Palm Beach County, the Palm Beach Post quoted one federal official as stating that bong and other drug paraphernalia seized were “disguised as cartoon characters.” Alleged drug items seized at 3 shops. *Palm Beach Post* (February 17, 2005).

advisories of enforcement actions; and enforcement actions relating to violations of local ordinances or state laws.

Proposed changes

This bill creates an nine member Drug Paraphernalia Abatement Task Force within the Executive Office of the Governor. The task force is to recommend strategies and actions for abating access to and the use and proliferation of drug paraphernalia, as that term is defined in s. 893.145, F.S.

The task force consists of six members appointed by the Governor:

- A representative of a corporation that is licensed to do business in this state and that sells any of the items described in s. 893.145, F.S.;
- A local law enforcement official or officer;
- A member of a faith-based community;
- A superintendent of a school district or a principal of a secondary school;
- A member of a community organization concerned about issues relating to illicit activities involving controlled substances; and
- A former or recovering drug addict.

These members must be representative of the geographic regions and ethnic and gender diversity of this state.

Other members include the Secretary of Business and Professional Regulation or his or her designee, the Secretary of the Department of Health or his or her designee and the director of the Office of Drug Control within the Executive Office of the Governor.

The first meeting of the task force must be held by July 15, 2006, at which time the members must select by majority vote a chairperson from among the task force members. All recommendations of the task force are by majority vote. The task force meets at the call of the chairperson as approved by the Governor and must conduct at least three public meetings in localities throughout this state which have a significant urban business district or have experienced problems with illicit controlled-substance activity resulting, in part, from access to and the use and proliferation of drug paraphernalia.

Meetings of the task force are open to the public and are subject to the requirements of ch. 286, F.S. Records of the task force are public records and subject to the requirements of ch. 119, F.S., except to the extent that public access to any of those records may be restricted pursuant to that chapter.

Members of the task force serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. The task force is staffed by the Office of Drug Control within existing appropriations.

The task force is required to study and take testimony regarding:

- The problem of access to and the use and proliferation of drug paraphernalia in this state;
- Businesses that sell items that may be used as drug paraphernalia;
- Current laws and rules and current efforts by regulatory agencies and law enforcement agencies to abate access to, use and proliferation of drug paraphernalia, including, whether new or amended laws and rules are needed; and
- Approaches to abate access to and the use and proliferation of drug paraphernalia.

The task force must submit a preliminary draft report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 45 days before the first day of the 2007 Regular Session of the Legislature and must submit its final report 15 days later. In addition to findings and recommendations, the report must include any proposed legislation or rules necessary to implement recommendations.

The task force is abolished July 1, 2007.

C. SECTION DIRECTORY:

Section 1. Creates the Drug Paraphernalia Abatement Task Force and provides for its membership and responsibilities.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Minimal. Task force members are entitled to per diem.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Members of the task force serve without compensation but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. The task force is staffed by the Office of Drug Control within existing appropriations.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted one amendment which clarified that the chair of the task force will call meetings of the task force *at the approval of the Governor*.

On December 8, 2005, the House Health Care General Committee passed House Bill 35 CS and adopted one amendment. The amendment added the Secretary of the Department of Health or his or her designee to the task force, thereby increasing the task force membership to nine.

The analysis reflects the bill as amended.

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CHAMBER ACTION

The Health Care General Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the abatement of drug paraphernalia; creating the Drug Paraphernalia Abatement Task Force within the Executive Office of the Governor; prescribing task force membership; providing for meetings and duties of the task force; providing that meetings and records of the task force are subject to statutory public meetings and records requirements; providing for members of the task force to be reimbursed for per diem and travel expenses; requiring the Office of Drug Control within the Executive Office of the Governor to provide staff support; requiring reports; requiring cooperation by state agencies; abolishing the task force on a specified date; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Drug Paraphernalia Abatement Task Force.--

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23 (1)(a) There is created within the Executive Office of the
24 Governor the Drug Paraphernalia Abatement Task Force for the
25 purpose of recommending strategies and actions for abating
26 access to and the use and proliferation of drug paraphernalia,
27 as that term is defined in s. 893.145, Florida Statutes.

28 (b) The task force shall consist of the following nine
29 members:

30 1. The Secretary of Business and Professional Regulation
31 or his or her designee.

32 2. The Secretary of Health or his or her designee.

33 3. The director of the Office of Drug Control within the
34 Executive Office of the Governor.

35 4. A representative from a corporation that is licensed to
36 do business in this state and that sells any of the items
37 described in s. 893.145, Florida Statutes, that may be used as
38 drug paraphernalia.

39 5. A local law enforcement official or officer.

40 6. A member of a faith-based community.

41 7. A superintendent of a school district or a principal of
42 a secondary school.

43 8. A member of a community organization concerned about
44 issues relating to illicit activities involving controlled
45 substances, including access to and the use and proliferation of
46 drug paraphernalia.

47 9. A former or recovering drug addict.

48 (c) Members of the task force shall be appointed by the
49 Governor by July 1, 2006, and shall be representative of the
50 geographic regions and ethnic and gender diversity of this

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51 state. The first meeting of the task force shall be held by July
52 15, 2006, at which time the members shall select by majority
53 vote a chairperson from among the task force members. All
54 recommendations of the task force shall be by majority vote.

55 (d) The task force shall meet at the call of the
56 chairperson, as approved by the Governor, and shall conduct at
57 least three public meetings, which shall be held in localities
58 throughout this state that have a significant urban business
59 district or have experienced problems with illicit controlled-
60 substance activity resulting, in part, from access to and the
61 use and proliferation of drug paraphernalia.

62 (e) Meetings of the task force shall be open to the public
63 and are subject to the requirements of chapter 286, Florida
64 Statutes. Records of the task force are public records and
65 subject to the requirements of chapter 119, Florida Statutes,
66 except to the extent that public access to any of those records
67 may be restricted pursuant to that chapter.

68 (f) Members of the task force shall serve without
69 compensation but are entitled to reimbursement for per diem and
70 travel expenses in accordance with s. 112.061, Florida Statutes.

71 (g) The Office of Drug Control within the Executive Office
72 of the Governor shall provide staff support for the task force
73 within existing appropriations.

74 (2)(a) The task force shall study and take testimony
75 regarding:

76 1. The nature and extent of the problem of access to and
77 the use and proliferation of drug paraphernalia in this state,
78 including the extent to which the marketing, selling, or

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79 purchasing of items that may be used as drug paraphernalia may
80 contribute to that problem.

81 2. Businesses that sell items that may be used as drug
82 paraphernalia, including, but not limited to, consideration of:

83 a. The types, ownership, organization, and operation of
84 those businesses.

85 b. The regulation of those businesses and the state and
86 federal laws applicable to them.

87 c. The marketing or selling of those items by those
88 businesses.

89 d. The inventory and sale of those items relative to the
90 total inventory and total sales of those businesses.

91 e. Measures taken by those businesses to restrict
92 purchases of those items by minors or otherwise restrict
93 purchases of those items.

94 f. The clientele of those businesses.

95 g. The prevalence of civil or criminal enforcement actions
96 taken against those businesses for violations of state or
97 federal rules or laws that are relevant to prohibited activities
98 involving drug paraphernalia.

99 h. The location of those businesses relative to the
100 location of schools; churches or places of worship;
101 neighborhoods; and buildings, facilities, and areas where
102 children may regularly congregate.

103 i. The opinions and concerns of local residents, community
104 and neighborhood activists and leaders, faith-based community
105 members and leaders, school personnel and students, businesses,

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service providers, local law enforcement officials and officers,
and local government officials regarding those businesses.

j. Local or community efforts to restrict or regulate
those businesses.

3. Current rules and laws and current efforts by
regulatory agencies and law enforcement agencies to abate access
to and the use and proliferation of drug paraphernalia in this
state, including, but not limited to, consideration of whether
it is necessary to amend those rules or laws or propose new
rules or new legislation.

4. Approaches to abate access to and the use and
proliferation of drug paraphernalia, including, but not limited
to:

a. Conforming the rules or laws of this state to federal
rules or laws that are relevant to abating access to and the use
and proliferation of drug paraphernalia.

b. Restricting the marketing, selling, or purchasing of
any item that may be used as drug paraphernalia and legal
concerns relevant to that restriction.

c. Adopting provisions of rules or laws of other states
that are relevant to abating access to and the use and
proliferation of drug paraphernalia.

5. Any other subject that is relevant to abating access to
and the use and proliferation of drug paraphernalia.

(b) The task force shall submit a preliminary draft report
of its findings and recommendations to the Governor, the
President of the Senate, and the Speaker of the House of
Representatives at least 45 days before the first day of the

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134 2007 Regular Session of the Legislature. The final report shall
135 be filed with the Governor, the President of the Senate, and the
136 Speaker of the House of Representatives at least 30 days before
137 the first day of the 2007 Regular Session. In addition to the
138 findings and recommendations included in the final report, the
139 report must include a draft of proposed rules and proposed
140 legislation for any recommendations requiring proposed rules and
141 proposed legislation.

142 (c) Each state agency shall fully cooperate with the task
143 force in the performance of its duties.

144 (3)(a) All meetings of the task force and all business of
145 the task force for which reimbursement may be requested shall be
146 concluded before the final report is filed.

147 (b) The task force is abolished July 1, 2007.

148 Section 2. This act shall take effect upon becoming a law.